

MSC/ACL TRANS-ATLANTIC SPACE CHARTER AGREEMENT

A Space Charter Agreement

FMC Agreement No. 012395-002

(2<sup>nd</sup> Edition)

Expiration Date: December 31, 2017

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1: FULL NAME OF THE AGREEMENT	1
ARTICLE 2: PURPOSE OF THE AGREEMENT	1
ARTICLE 3: PARTIES TO THE AGREEMENT	1
ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT	1
ARTICLE 5: AGREEMENT AUTHORITY	2
ARTICLE 6: OFFICIALS OF THE AGREEMENT AND DELEGATION OF AUTHORITY	4
ARTICLE 7: MEMBERSHIP AND RESIGNATION	5
ARTICLE 8: VOTING	5
ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT	5
ARTICLE 10: GOVERNING LAW AND ARBITRATION	6
ARTICLE 11: ASSIGNMENT	6
ARTICLE 12: NOTICES	6
ARTICLE 13: SEVERABILITY	7

ARTICLE 1:            FULL NAME OF THE AGREEMENT

The full name of this Agreement is the MSC/ACL Trans-Atlantic Space Charter Agreement (hereinafter referred to as the "Agreement").

ARTICLE 2:            PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to authorize MSC to charter space to ACL in the Trade (as hereinafter defined) on a temporary, interim basis to assist ACL with space needs that may arise as a result of possible delays in delivery of its new vessels and the phasing-in of those vessels.

ARTICLE 3:            PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "Party" or "Parties") are:

1.     Atlantic Container Line A.B. ("ACL")  
       50 Cardinal Drive  
       Westfield, NJ 07090
2.     MSC Mediterranean Shipping Company S.A. ("MSC")  
       12-14 Chemin Rieu  
       1208 Geneva  
       Switzerland

ARTICLE 4:            GEOGRAPHIC SCOPE OF THE AGREEMENT

The geographic scope of this Agreement is the trade between ports in North Europe (Antwerp, Bremerhaven, Rotterdam) on the one hand and the Port of New York/New Jersey on the other hand (the "Trade").

ARTICLE 5:            AGREEMENT AUTHORITY

5.1     MSC shall charter to ACL, and ACL shall purchase from MSC, space on an "as needed/as available" basis on MSC's SAWC-USA-NWC service for the movement cargo in the Trade. The Parties are authorized to discuss and agree on the terms and conditions applicable to the sale and purchase of space, including the amount of slot charter hire and the loading and unloading of cargo.

5.2     (a) ACL shall not sub-charter or otherwise sell any space received hereunder to any ocean common carrier without the prior written consent of MSC.

(b)     Dangerous goods and out-of-gauge cargo will be accepted, subject to MSC's prior approval and on such other terms as may be agreed by the Parties from time to time.

5.3     MSC shall keep ACL advised of the scheduling of its vessels and any changes in schedule. If MSC decides to permanently change the geographical scope or rotation of the service, it shall give not less than fifteen (15) days written notice to ACL.

5.4     After cargo has been booked by ACL and accepted by MSC and received on the terminal by MSC, ~~To~~ to the extent the need to omit a port(s) has been caused by factors for which MSC, their agent(s) or sub-contractor(s) are responsible, MSC will arrange transshipment and/or on-carriage of the affected cargo to the port at which the cargo should have been discharged, provided always that MSC shall be responsible for port omissions only to the extent they are caused by the negligence, breach of this Agreement, or other fault of MSC, their agent(s) or sub-contractor(s). Notwithstanding anything herein, MSC shall not be responsible

to the ACL for port omissions in the following circumstances and all costs to get ACL's cargo to the port at which it should have been discharged will be for ACL's account:

- (i) Berth congestion at the omitted port was anticipated to incur a delay of 48 hours or more;
- (ii) Closure of the port or incapacity to operate the vessel in the port due to bad weather, industrial action, strikes of any terminal service providers or unavailability of terminal equipment anticipated to incur a delay of 48 hours or more; or
- (iii) Save as modified by (ii) above, any lawful deviation such as saving or attempting to save life or property or any force majeure event as defined by the Parties from time to time.

5.5 ~~The Parties are authorized to discuss and agree on matters relating to terminal operators and stevedores, and to reach agreement on other issues relating to the loading and/or discharge of cargo~~

5.6—The Parties agree to comply with all applicable laws, rules, regulations, directives, or orders issued by any authorities that have jurisdiction in relation to the Trade and this Agreement including, but not limited to, laws and regulations requiring the provision of information to Customs or other authorities.

5.6 The Parties are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties; port omission arrangements; stowage planning; record-keeping; responsibility for loss of or damage to cargo and/or containers; insurance; force majeure; the handling and resolution of claims and other liabilities; indemnification; documentation and bills of lading; and the treatment of hazardous and dangerous cargoes; ~~and the~~

~~monitoring and handling of and responsibility for reefer containers.~~

5.78 Pursuant to 46 C.F.R. § 535.408(b), any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

5.89 Each Party shall retain its separate identity and shall have separate sales, pricing and marketing functions. Each Party shall issue its own bills of lading and handle its own claims. Nothing in this Agreement shall give rise to or be construed as constituting a partnership for any purpose or extent and, unless otherwise agreed, neither Party shall be deemed to be the agent of the other.

ARTICLE 6:        OFFICIALS OF THE AGREEMENT AND DELEGATIONS OF AUTHORITY

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda, writings and other communications between the Parties.

6.2 The following individuals shall have the authority to file this Agreement with the Federal Maritime Commission as well as the authority to delegate same:

- (a) any authorized officer of each of the Parties; and
- (b) legal counsel for each of the Parties.

ARTICLE 7:            MEMBERSHIP AND RESIGNATION

New Parties to this Agreement may be added only upon unanimous consent. The addition of any new Party to this Agreement shall become effective after an amendment noticing its admission has been filed with the Federal Maritime Commission and become effective under the Shipping Act of 1984, as amended. Any Party may withdraw from this Agreement in accordance with the provisions of Article 9 hereof.

ARTICLE 8:            VOTING

Except as otherwise provided herein, actions taken pursuant to, or any amendment of, this Agreement shall be by mutual consent of the Parties.

ARTICLE 9:            DURATION AND TERMINATION OF AGREEMENT

9.1    (a) This Agreement and subsequent amendments thereto shall enter into effect on the date the Agreement or amendment becomes effective under the Shipping Act of 1984, as amended, and shall commence as of that date or such later date as the Parties may agree.

(b) Subject to Article 9.2, the Agreement shall remain in effect until December 31, 2017, unless earlier terminated by mutual agreement of the Parties.

9.2    This Agreement may be terminated for any reason at any time by either Party upon 15 days written notice pursuant to the following provisions:

~~(a) MSC may terminate this Agreement with immediate effective in default of payment of an undisputed invoice more than 30 days after the invoice payment date agreement by the Parties.~~

~~(b) If at any time during the term of this Agreement a Party is dissolved, or becomes insolvent or fails to pay its debts as they become due, or becomes subject to any form of insolvency, liquidation or bankruptcy procedure or takes any action in furtherance of the same (other than for the purpose of a consolidation, reconstruction or amalgamation previously approved in writing by the other Party), the other Party may give notice to the affected Party terminating with immediate effect or suspending for such period as the other Party, in its sole discretion deems appropriate, this Agreement or any part thereof.~~

~~(d) In case the ownership or shareholding of a Party is modified in a way altering the relevant Party's financial control or their material ownership, the other Party, if it judges in good faith that such modification is likely to jeopardize the Agreement's implementation and performance and/or to be likely to prejudice the cohesion and/or viability of this Agreement, shall be entitled to terminate the present Agreement on one (1) months prior written notice which must be given within three (3) months of the judging Party being advised of the change in ownership or shareholding.~~

9.3 Any termination of this Agreement shall be without prejudice to the accrued rights and obligations of the Parties hereunder and to any right and obligation hereunder expressed to survive such termination.

ARTICLE 10:        GOVERNING LAW AND ARBITRATION

10.1 This Agreement and any dispute or matter arising out of or under this Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby submit to the exclusive jurisdiction of the High Court in London.

10.2 Notwithstanding the above any dispute where the claim or counterclaim does not exceed US\$100,000 shall be referred to arbitration under the LMAA Small Claims Procedure

10.3 Either Party may at any time call for mediation of a dispute under the auspices of the LMAA. Unless agreed such mediation shall not otherwise interfere with or affect anything else including the time bars and Court procedure. If a Party calls for mediation and such is refused, the Party calling for mediation shall be entitled to bring that refusal to the attention of the Court.

ARTICLE 11:        ASSIGNMENT

Neither Party shall be entitled to assign or transfer its rights or obligations under this Agreement, except with the other Party's consent.

ARTICLE 12:        NOTICES

Any correspondence or notices hereunder shall be made by courier service or registered mail, or in the event expeditious notice is required, by fax confirmed by courier or registered mail, to the following addresses:

MSC/ACL TRANS-  
ATLANTIC SPACE CHARTER  
AGREEMENT  
FMC Agreement No. 012395-002  
(2<sup>nd</sup> Edition)  
Original Page No. 8

ACL:

Atlantic Container Line A.B.  
50 Cardinal Drive  
Westfield, NJ 07090

MSC:

MSC Mediterranean Shipping Company  
S.A  
12-14 Chemin Rieu  
1208 Geneva, Switzerland

ARTICLE 13:      SEVERABILITY

If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational then the said provision shall cease to have effect between the Parties but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.